



PATENT
2119-107P

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S): CLARK et al.

SERIAL NO.: 09/049,121

GROUP: 2872

FILED: March 27, 1998

EXAMINER: J. Phan

FOR: VERTICAL COMB DRIVE ACTUATED DEFORMABLE MIRROR
DEVICE AND METHOD

RESPONSE TO RESTRICTION REQUIREMENT

Assistant Commissioner for Patents
Washington, D.C. 20231

December 3, 1999

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TECHNOLOGY CENTER 2800

Election
12/7/99
J. Phan

Dear Sir:

Responsive to the Examiner's Restriction Requirement dated November 2, 1999, the following election and remarks are respectfully submitted in connection with the above-referenced application.

The Examiner has required election of a single disclosed species for prosecution on the merits. The Examiner has stated that the elected invention contains claims directed to the following distinct species of the claimed invention:

- (1) A deformable mirror having the structure disclosed in Fig. 2,
- (2) A deformable mirror having the structure disclosed in Fig. 3,
- (3) A deformable mirror having the structure disclosed in Figs. 4A-4B,
and
- (4) A deformable mirror having the structure disclosed in Fig. 5.

In response to the Examiner's restriction/election requirement, Applicants respectfully elects the species of fig. 5 to which claims 1-5, 8-17 and 19-20 are drawn, with traverse. Applicants note that claims 1-5, 8, 12, 14-17 and 19-20 are generic to all species.

Furthermore, Applicants respectfully direct the Examiner's attention to M.P.E.P. §803 which states:

"If the search and examination of an entire application can be made without serious burden, the Examiner must examine on the merits, even though it includes claims too distinct or independent invention." (emphasis added)

There are two criteria for a proper requirement for restriction. The invention should be independent or distinct, and

"2) there must be a serious burden on the Examiner if a restriction is not required. See M.P.E.P. §803.092, 806.04 A through J, 808.01(a) and 808.02."

Applicants respectfully submit that the Examiner would not be unduly burdened if forced to examine the presently restricted subject matter.

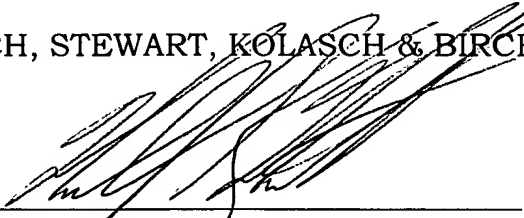
For all of the above stated reasons, reconsideration and withdrawal of the outstanding restriction/election requirement and favorable allowance of all claims in the instant application are earnestly solicited.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Very truly yours,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By


Michael K. Mutter
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For: VERTICAL COMB DRIVE ACTUATED DEFORMABLE
MIRROR DEVICE AND METHOD

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LARGE ENTITY TRANSMITTAL FORM

TECHNOLOGY CENTER 2800

Assistant Commissioner for Patents
Washington, DC 20231

December 2, 1999

Sir:

Transmitted herewith is a Reply to Restriction/Election Requirement in the above-identified application.

- ☐ The enclosed document is being transmitted via the Certificate of Mailing provisions of 37 C.F.R. § 1.8.
- ☐ Petition for _____ () month(s) extension of time pursuant to 37 C.F.R. §§ 1.17 and 1.136(a). \$0.00 for the extension of time.
- ☒ No fee is required.
- ☐ A check in the amount of \$0.00 is enclosed.
- ☐ Please charge Deposit Account No. 02-2448 in the amount of \$0.00. A triplicate copy of this sheet is attached.

Appl. No. 09/049,121

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

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(Rev. 03/30/99)